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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-fifth session

SUMMARY RECORD OF THE 1044th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 2 August 1994, at 3 p.m.

Chairman: Mr. GARVALOV

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GE.94-18232 (E)

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Eleventh and twelfth periodic reports of Canada (CERD/C/210/Add.2, CERD/C/240/Add.1) (continued)

1. At the invitation of the Chairman, Mr. Hynes, Mr. Duern, Ms. Whittaker and Ms. Weiser (Canada) took places at the Committee table.

2. The CHAIRMAN invited the members of the Committee to continue their consideration of the reports of Canada.

3. Mr. RECHETOV said that Canada's reports were extremely interesting and expressed appreciation for the high level of the delegation sent to represent it. He would be brief, for most of his questions had already been raised by Mr. Wolfrum. Paragraph 28 of the eleventh report (CERD/C/210/Add.2) mentioned a very important decision of the Supreme Court of Canada involving the relationship between freedom of expression and the propagation of hatred, an issue that raised very complex problems for many countries; in fact, the cases in question had been widely publicized by the media. The decision was especially important as it had led the Supreme Court to take note of Canada's international obligations, including those arising from the Convention. However, paragraphs 6 and 7 of the twelfth report (CERD/C/240/Add.1) mentioned another Supreme Court decision that reflected a different conclusion. He wondered whether such a change of view was compatible with Canada's international obligations and requested additional information on that Supreme Court decision.

4. Mr. Wolfrum had referred to the situation of indigenous peoples; anything relating to that situation was of the greatest interest. Paragraph 32 of document CERD/C/210/Add.2 mentioned a well-known episode in relations between the Canadian authorities and the Mohawk Indians. It was his understanding that the Mohawks' situation was being monitored by a United Nations body to which the Canadian Government had reported on that episode, the Commission on Human Rights or the Sub-Commission on Prevention of Discrimination and Protection of Minorities. He would like more detailed information on those events, the way the problem had been resolved and the most recent reactions by the United Nations bodies concerned.

5. Paragraph 33 of document CERD/C/210/Add.2 referred to a national native alcohol and drug abuse programme. It was common knowledge that different peoples reacted differently to alcohol - the Russians had quite a reputation in that respect, not to speak of the French. It would be useful to know how indigenous people in Canada perceived the problem and reacted to the programme in question. Alcohol was extremely harmful to people's health, but if the authorities instituted a special programme aimed at a particular ethnic group, one was justified in asking how that group accepted being held up as an example.

6. Concerning paragraph 35 of CERD/C/210/Add.2, which spoke of the practice of repeatedly communicating by telephone any matter likely to stir hatred, he would like to know what was involved exactly and how that created a danger from a legal standpoint. He associated himself with the remarks of Mr. Wolfrum and other members of the Committee concerning paragraph 45 of document CERD/C/210/Add.2 on the importance of national languages, especially indigenous languages, the use of which should be encouraged in school, on television, in the press, public places, health services, etc.

7. Mr. SHAHI expressed appreciation for the eleventh and especially the twelfth report of Canada and their oral presentation. He had been particularly impressed by the suggestions on how Canada and the Committee might help each other improve the implementation of the Convention. Canada's anti-discrimination legislation was outstanding; the federal Government and nearly all the provinces had initiated numerous anti-discrimination programmes that deserved the Committee's praise. Following Mr. Wolfrum's statement he would raise just a few points.

8. Turning first to Canada's eleventh report (CERD/C/210/Add.2), he noted that paragraph 5 dealt with the Employment Equity Act, a very interesting instrument that was aimed at rectifying the under-representation of certain groups in the Canadian workforce. The paragraph stated that the Act applied to approximately 630,000 employees in some 370 firms: it would be useful to have statistics on the number of designated group members - including indigenous people - covered by the Act. The figures provided in paragraphs 9 and 10 of the document were also very instructive; they indicated, however, that the number of jobs held by indigenous people was increasing very slowly and that their representation in the workforce was much lower than that of visible minorities as a whole. It was to be hoped that there would be a further increase in their representation, especially in the civil service.

9. Paragraphs 22 to 25 of document CERD/C/210/Add.2 described measures taken to combat racial discrimination through a series of educational programmes; reference was also made to the awareness campaign to commemorate the International Day for the Elimination of Racial Discrimination. All those efforts were extremely praiseworthy. On another matter, he hoped that Canada's next report would contain statistics on the recruitment of members of minority groups into the Royal Canadian Mounted Police and the provincial police services. Paragraph 66 stated that the Law Reform Commission of Canada was examining the Criminal Code with a view to eliminating any discriminatory provisions: in its next report, Canada should mention the Commission's proposals or action taken on its recommendations.

10. Turning to Canada's twelfth report (CERD/C/240/Add.1), he expressed the hope that a detailed account would be given of the results of the work undertaken by the Royal Commission on Aboriginal People. Paragraph 48 of the report said that many measures at the federal level were paralleled in similar developments in the provinces and territories with regard to the implementation of articles 1, 2 and 7 of the Convention. The following report might usefully contain information on measures taken in pursuance of articles 5 and 6 of the Convention.

11. Document CERD/C/240/Add.1 did not provide sufficient information on the action taken on complaints of racial discrimination in Canada's various provinces. Although paragraph 61 stated that the British Columbia Council on Human Rights had found 22 out of 23 complaints to be justified, figures for the other provinces were non-existent or incomplete. In view of the increase in racial discrimination mentioned by the representative of Canada, it would seem essential to know what action was taken by the provincial authorities on complaints of racial discrimination. Canadian legislation apparently laid down no penalties for acts of racial discrimination, contrary to the provisions of article 4 of the Convention. It also seemed that persons coming within the purview of the Indian Act could not appeal to the Canadian Human Rights Commission. Why was the Canadian Human Rights Act not applicable to persons covered by the Indian Act?

12. He hoped that Canada would seriously consider making the declaration provided for in article 14 of the Convention; the frank and open dialogue that had taken place between Canada and the Committee and the fact that Canada took its obligations seriously should encourage it to do so. As Mr. Banton had said, Canada could give the Committee valuable assistance by undertaking initiatives at meetings of States parties.

13. Mr. HYNES (Canada) conveyed the apologies of Mr. Shannon, who could not be present because of compelling obligations elsewhere. One of his responsibilities as Human Rights Coordinator in the Department of Foreign Affairs was to ensure that Canada fulfilled its international human rights obligations as well as possible. He thanked the members of the Committee for their many favourable remarks, and said that he was very impressed by their thoroughness in considering Canada's report. He and his colleagues would try to reply to the many specific questions raised; that would not always be possible in view of the very limited time they had had to prepare themselves, but if anything had been overlooked replies would be provided in due course.

14. There had been many comments on the structure of the report, not the first such comments from human rights treaty bodies. Canada submitted its reports in the way it did for constitutional reasons. Cooperation between the federal authorities and the provinces and territories required methods which might appear burdensome but showed how seriously the Canadian authorities tried to fulfil their reporting obligation. Naturally, full account would be taken of any suggestion on presentation that was compatible with constitutional requirements.

15. He was impressed by the Committee's interest in the various Canadian anti-discrimination programmes; members had asked whether it would be possible to provide indicators on the results of the programmes. Results were certainly important, but problems of intolerance, whose source was the human mind, did not lend themselves to scientific measurement. One member of the Committee had spoken favourably of Canada as a laboratory for the development of a multi-cultural society; that laboratory had not yet been able to devise methods for measuring results. Although some factors, such as employment, did lend themselves to statistical measurement, others related to attitudes and were more difficult to gauge.

16. Mr. DUSEN (Canada), speaking as a member of the Human Rights Directorate within the Department of Canadian Heritage, said that he would endeavour to reply to questions directly relating to the functions of the Directorate, which was responsible for establishing relations with human rights bodies and cooperating with the provinces.

17. Reverting to the question of the structure of the report and the related question of the division of responsibilities, he said that under the Constitution, responsibilities were clearly divided between the federal Government and the provinces and were shared in only a few specific areas. As to the implementation of international treaties, the Privy Council had decided in a series of cases on the implementation of ILO Conventions that only the federal authorities were empowered to sign international treaties, even without consulting the provinces. But the Privy Council had also ruled that the federal Government could not oblige the provinces to amend their legislation to give effect to the provisions of those treaties because matters within their exclusive jurisdiction were involved as in the case of many human rights instruments. To respond to that situation, the Government had established machinery for permanent consultation with the provinces and territories on the signature and implementation of international instruments. That consultative body included representatives of all provinces and territories, as well as the federal Government. Before signing an international convention, Canada consulted with provinces and territories to ensure that all the laws in force in Canada were already in conformity with the terms of the instrument in question, or that relatively minor changes would be needed to bring them into conformity within a reasonable time. After signature, the consultative body monitored progress towards implementation, in particular by supervising the preparation of reports to the human rights treaty bodies. In 1979, all the ministers responsible for human rights had signed a protocol on the signing and follow-up of conventions and the preparation of reports. It included a provision to the effect that provinces and territories had the right to prepare their own sections of reports dealing with their respective jurisdictions; the provinces and territories generally chose to exercise that right and rarely delegated it to the federal Government. That largely explained the structure of Canada's reports; the system could obviously only be changed gradually and by consensus.

18. The goal of the Canadian Race Relations Foundation, currently being set up, was to contribute to the expansion of knowledge in the field of race relations, essentially by developing a national clearing house of information. It would develop new approaches and assist researchers and institutions working in areas such as the law, the media, education and social services. The Foundation would have no law-enforcement powers, but it would be able to assist the law-enforcement services in their work. It would be fully autonomous and would have a Board of Directors of 19 members, plus a Chairperson and Executive Director and three members of an Investment Committee. The Board of Directors would decide on the Foundation's contribution to international activities, especially the Third Decade to Combat Racism and Racial Discrimination, and the Committee would be informed.

19. The term "visible minority" was commonly used in Canada, even in official documents, to refer to people who, on account of particular physical traits, were readily identifiable as belonging to a minority racial or ethnic group;

it was in no case a legal term. It designated one kind of group that was especially vulnerable to discrimination, in addition to groups such as women and religious minorities. It should be noted that the term was used in national censuses; respondents were asked to indicate, on an optional basis, whether they considered themselves to be members of a visible minority. The term "identifiable group" was much broader and might include characteristics such as sex, culture, language and religion.

20. With reference to multiculturalism, he said that the Department of Multiculturalism and Citizenship, whose functions were described in paragraphs 16 to 18 of the eleventh periodic report (CERD/C/210/Add.2), had become the Department of Canadian Heritage, whose scope was much broader and included multiculturalism, communications, programme broadcasts, and the physical and cultural heritage. The functions of the new Department would be described at greater length in Canada's next report. The reorganization in no way implied a change of policy.

21. Canada's human rights reports were distributed to university and school libraries and human rights associations throughout Canada, as well as to individuals requesting them. Regarding follow-up to the redress claims mentioned in the eleventh report, the Government had not yet taken a decision but would ensure that all parties were treated fairly.

22. Mr. HYNES (Canada) agreed that his country's reports were awkward to work with, but pointed out that they contained input from all levels of Government. Governmental mechanisms in Canada were complex, but they had the advantage of existing and functioning in practice.

23. Ms. WHITTAKER (Canada), replying to questions on land claims, said that her Government's general approach was to engage in negotiations, even if the process was quite lengthy. For example, the comprehensive land claim of the Tungavik Federation of Nunavut had been negotiated from 1977 to 1993, i.e. over 15 or so years, but it had led to the settlement of a population of 175,000 inhabitants in 350,000 square kilometres of territory rich in mineral resources and the granting of more than $1 billion in compensation, as well as fees and guarantees. That was only one settlement among many. In British Columbia, the tripartite body that dealt with claims had accepted 42 statements of intent to negotiate between December 1993 and July 1994. There were also specific claims, involving alleged breaches of lawful obligations. The changes described in paragraph 30 of document CERD/C/210/Add.2 had made possible 31 settlements in 1993-1994, and Indian research organizations continued to submit new claims. It might not prove possible to resolve all claims by the year 2000, as previously hoped. The cash in lieu of land mentioned in paragraph 13 of the twelfth report (CERD/C/240/Add.1) was a standard arrangement through which the beneficiary could either buy the land or receive a cash payment.

24. Turning to the events at Oka, in which a police officer had died and the Mohawk community had erected barricades to show their opposition to the expansion of a golf course into an area which it claimed, she observed that Canada had appeared before the Sub-Commission to discuss the events while they had been taking place, and had appeared before the Human Rights Committee after the removal of the barricades. Since then, the Mohawks had agreed to

the negotiation process developed by the negotiators, which provided for an interim agreement to help unify the Mohawk community land base. Since 1990, over $15 million had been spent on that task, and funding had also been provided for a community healing process. Negotiations continued, with the assistance of a mediator, and should be successful, despite the fact that progress had been slower and more difficult than expected. Another outcome of the events had been the action taken on recommendations by a parliamentary committee for measures to resolve internal governance and community healing issues. Trials had been held for those charged with offences, and the inquiry into the killing of the police officer was continuing. One interesting initiative linked to the events had been the establishment of a round table of three Mohawk communities, with the participation of several federal ministers, to address specific concerns in the areas of economic development, taxation, policing and the administration of justice.

25. In reply to questions on aboriginal self-government, mentioned in paragraph 14 of the twelfth report (CERD/C/240/Add.1), she said that the constitutional changes contained in the Charlottetown Accord, which had included provisions on aboriginal self-government, had been rejected by a majority of Canadians and a majority of aboriginal people. However, various territories enjoyed some self-government. There had also been criticisms of the amendments to the Indian Act, which were described in paragraph 21 of the eleventh report (CERD/C/210/Add.2), as well as the Indian Act as a whole. Bill C-31, which contained amendments to the Act, was aimed at bringing it into conformity with the Canadian Charter of Rights and Freedoms and the decision of the Human Rights Committee in the Lovelace case. Its adoption had resulted in over 94,000 people, many of them women, gaining Indian status and being able to take advantage of health, housing and post-secondary education programmes available to status Indians. It was also significant that only six bands had challenged Bill C-31 before a federal court, saying that the amendments infringed their right to determine their own membership. Bill C-31 was an improvement over the Indian Act, which was outdated. Her Government saw Indian self-government as a way for Indian communities to move beyond the Act.

26. In response to the Committee's concern at the situation of the Davis Inlet community, she provided some background information. The Indians of the Innu nation, who had settled in Davis Inlet after a series of misfortunes, had become the focus of public attention after a house fire in 1992 had resulted in a report by the Innu nation on the community's appalling living conditions. That had been followed, in January 1993, by the discovery of six children sniffing gasoline in an apparent suicide pact. Federal and provincial Governments had provided services, including substance abuse treatment for the children, on the basis of a seven-point plan for community renewal presented by the Innu. In February 1994, the Canadian Government had committed itself to immediate action to relocate the community and provide for its long-term economic development through measures sensitive to Innu traditions. The community had accepted the commitment on 27 April, and work was under way to implement the agreement.

27. With regard to aboriginal justice inquiries, she cited the Task Force on Criminal Justice and its Impact on Indian and Metis People of Alberta, which had made over 340 recommendations for major changes in the approach of

Government towards aboriginal people. The Aboriginal Justice Initiative (AJI), introduced in 1991, had received funding in the amount of $26.4 million to make immediate improvements and to develop a strategy to address the needs and aspirations of aboriginal people in the area of justice administration. As of 1 March 1994, over 60 projects had been funded across Canada, primarily concerning alternative dispute resolution, customary law, involvement of aboriginal people in the justice process, and improved services to women, victims of abuse and young people.

28. Turning to the police services, she said that the First Nations Policing Policy (FNPP) announced in June 1991 was designed to improve existing services, which were henceforth to be governed by a number of principles. They should, in particular, respect indigenous cultures and be equal in quality to policing services in non-indigenous communities in their region. They should be responsive to First Nations culture, and First Nations communities should play a key role in choosing the type of police service that best suited their needs.

29. Replying to a question on expenditure for aboriginal people in Canada, she said that education was one area where increased funding had had considerable impact. The use of indigenous languages was emphasized; women currently represented two thirds of the student population, and new prospects were opening up at the postgraduate level. For a description of the use of indigenous languages on radio and television, she referred members to paragraphs 36 and 37 of document CERD/C/240/Add.1, which were quite explicit.

30. As an indication of the state of health of the population, she provided statistical data showing that the birth rate for Inuit was two to three times the rate for the rest of Canada, and that from 1976 to 1986 life expectancy at birth had risen from 59.8 to 63.8 years for Indian men and from 66.3 to 71 years for Indian women; life expectancy among Inuit in the Northwest Territories had been estimated at 66 years in 1987. Although differences persisted between the life expectancy of indigenous people and that of the rest of the population, they were diminishing. However, the suicide rate among young adults was 22 per 100,000 among Indians, which was very high in comparison with the rate of 11 per 100,000 for the Canadian population as a whole. The problem of alcohol abuse existed in some communities and was the subject of a special programme. The federal Government was responsible for programmes for Indians, which were offered in addition to the usual health services provided for the Canadian population. Indigenous communities had negotiated with the Government to obtain programmes to combat drug and alcohol abuse and to train staff in those areas, emphasis being placed on community participation.

31. In reply to a question on the attitude of indigenous people towards the Convention, she said that although those people were covered by the Convention, they did not appreciate being called "minorities". Concerning intercultural education, she noted that 1993 had been the International Year of the World's Indigenous People, on which occasion Canada had highlighted the contribution of the various cultures of peoples living on Canadian soil. The Committee would receive copies of the very detailed report that had been prepared on that occasion.

32. Mr. HYNES (Canada), replying to a question by Mr. Rechetov concerning the events at Oka and the account given to the United Nations, said that in 1990 his delegation had reported daily to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and to the Chairman of the Working Group on Indigenous Populations, providing full details on measures taken or planned by the Government to resolve the situation, which had been potentially explosive but had fortunately ended without further bloodshed. At the time, Canada had expressed appreciation for the sensitivity and sense of responsibility shown by the Sub-Commission. His Government was continuing its efforts to try to resolve such problems, with the same perseverance as it had shown during the 1990 conflict.

33. Ms. WEISER (Canada) said that she would outline the overall framework for human rights protection. The Canadian Charter of Rights and Freedoms, which guaranteed a wide range of rights and fundamental freedoms, had been part of the Constitution of Canada, and therefore of the supreme law of Canada, since 1982. Section 15 of the Charter guaranteed equality and prevention of discrimination based on race, religion, national or ethnic origin and colour. It applied to systemic as well as intentional discrimination. In addition, section 27 of the Charter provided that the Charter should be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. Both the federal and provincial Governments were bound by the Charter. Any person who believed that his rights under the Charter had been violated was able to apply to the courts for a remedy. In connection with the Canadian Human Rights Act, promulgated in 1977, she said that as a result of the division of legislative authority in Canada, responsibility for human rights matters was shared by the federal and provincial Governments. The federal Government, the provinces and the territories had each enacted human rights codes or statutes that dealt primarily with questions of discrimination. Whereas the Charter applied to the actions of the Government, the codes and statutes applied in the public sphere and to many areas of the private sector (in particular, employment, the provision of residential accommodation, and the provision of goods and services). Federal and provincial human rights codes were usually enforced by human rights agencies independent of Government, which were responsible for investigating and attempting to settle complaints. If that was not possible, a complaint could usually be referred to an independent tribunal for adjudication. The main advantage of that system was that it provided a simplified non-judicial conciliation mechanism available to complainants at no financial cost.

34. The Canadian Charter of Rights and Freedoms represented the supreme law of the land and took precedence over the Canadian Human Rights Act, which overrode any other legislative provision, as indicated by the decision in a 1989 case, Attorney-General of Canada v. Druken, a copy of which would be sent to the Committee. Primacy was not expressly written into the Canadian Human Rights Act, but the inclusion of a provision to that effect was being considered.

35. Members of the Committee had asked about the length of time that amendments to the Canadian Human Rights Act were taking. A number of contentious issues had affected proposed amendments to the Act. For example, there were very strong views among the Canadian population on the extent to which the Act should address sexual-orientation issues. The question of what

could be done to improve the efficiency of the Canadian Human Rights Commission in addressing discrimination issues was also a controversial one. Within that context, some of the considerations raised by the Committee at the preceding meeting were being examined. It should be borne in mind, however, that the Commission as it currently operated, offered redress for persons subjected to discrimination. It had handled over 46,000 inquiries and over 17,000 formal complaints in the past year.

36. Committee members had also asked why the Canadian Human Rights Act did not apply to the Indian Act. The federal Government was currently considering an amendment to change that situation. It should also be remembered that the Canadian Charter of Rights and Freedoms did apply to the Indian Act, and that the Government was thus obliged to respect the guarantees of equality and non-discrimination in the context of that Act.

37. Numerous questions had been asked about the Employment Equity Act. The statistics on employment equity indicated that there had been steady progress in the representation of the "visible minority" and "aboriginal" groups. However, the representation of those groups in the workforce covered by the Act was lower than their overall representation in the Canadian workforce. The Canadian Government was therefore continuing its efforts and was reviewing the scope, effectiveness and method of enforcement of the Act. It would inform the Committee of the outcome of those considerations in its next report and would also try to provide the Committee with information on whether the members of the designated groups were found in high or low positions of employment, together with additional statistics.

38. Several questions had been asked about the application of the Canadian Human Rights Act to immigrants. Article 40 of the Act defined the Act's jurisdiction with regard to immigrants. First, the Canadian Human Rights Commission could not examine claims relating to matters which had occurred in Canada if the complainant had not been residing in the country lawfully. In most cases, however, the Canadian Charter of Rights and Freedoms would apply since, under a previous Supreme Court decision, it applied to everyone physically present in Canada. The Canadian Human Rights Commission did not have jurisdiction over discriminatory practices occurring outside Canada unless the victim was a Canadian citizen or permanent resident. Article 40 of the Canadian Human Rights Act was currently the subject of litigation in several cases. Her Government would update the Committee on those cases in its following report.

39. Committee members had asked numerous questions about Canada's compliance with article 4 of the Convention, in particular regarding several cases of hate propaganda dealt with by the Canadian courts. Section 319 of the Criminal Code laid down the offence of wilfully promoting hatred against any identifiable group by communicating statements, other than in private conversation. Incitement to hatred against an identifiable group which was likely to breach the peace was also a punishable offence. The Criminal Code defined an identifiable group as any section of the public distinguished by colour, race, religion or ethnic origin. The validity of the Criminal Code offence had been upheld in two cases: R. v. Keegstra, in which Mr. Keegstra, a high-school teacher, had been charged with communicating anti-Semitic statements to his students, and R. v. Andrews and Smith, in which the accused

had been responsible for the publication and distribution of the Nationalist Reporter, a magazine containing assertions of white superiority with racist and anti-Semitic overtones on issues such as immigration, "race-mixing" and the Holocaust. Whenever the Supreme Court had considered laws prohibiting incitement to hatred, it had stated that such laws should be sufficiently circumscribed so as not to unduly inhibit freedom of expression and association.

40. The need carefully to tailor anti-hate legislation had been re-emphasized in the Supreme Court's decision in R. v. Zundel, which several members of the Committee had mentioned. In that case, Zundel had been convicted under a different provision of the Criminal Code, section 181. The original and obviously very dated purpose of that provision had been to preserve political harmony by preventing slander against the monarch and the nobility. Due to unusual circumstances Mr. Zundel had been charged under that section rather than other applicable provisions of the Code, such as section 319. The Supreme Court had invalidated section 181, but that did not prevent it from sanctioning incitement to hatred, for section 319, which was still in force and whose validity had been confirmed by the courts, continued effectively to do so.

41. However, since hate-motivated activity was considered to be particularly abhorrent and destructive to Canadian society, a number of measures had been taken or were being considered. Some of them had been mentioned by members of the Committee at the preceding meeting. For example, they had noted the establishment in June 1992 of a Federal/Provincial/Territorial Working Group on Multiculturalism and Justice, responsible for developing an integrated legislative and non-legislative response to hate motivated activity and hate groups. Special attention was also being given to ethno-cultural communities which might be victimized by criminal gangs and measures that might be taken in response. Her colleague had referred to the special procedures developed by the police forces to investigate hate-motivated activity and also the proposed sentencing bill.

42. Her Government was aware of the Committee's concerns about Canada's full compliance with article 4 of the Convention and would carefully consider members' views. However, Canada believed that the host of measures it had taken to address hate propaganda and hate-motivated activity demonstrated its serious commitment to combating that problem.

43. Canada was currently considering making the declaration provided for in article 14 of the Convention, recognizing the competence of the Committee to receive and consider communications. However, the "Study on the implementation of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination" (the Inglés report), adopted by the Committee at its twenty-seventh session, raised some difficulties for Canada. According to the conclusions of the study, States should make acts such as the dissemination of ideas based on racial superiority or hatred a punishable offence, whether or not the offence had been intentional. Section 7 of the Canadian Charter of Rights and Freedoms, however, stipulated that some level of intent must be proved for an act to be considered an offence. In trying to achieve a balance between eliminating hate propaganda, on the one hand, and protecting freedom of expression and freedom of association, on the other,

Canadian law addressed the activities of hate organizations rather that their existence. The strict interpretation of article 4 in the study therefore created some difficulties. The Canadian authorities had studied the Committee's most recent General Recommendation on article 4, which they had found to be very useful, and would appreciate receiving more detailed views in that connection. It should also be noted that Canada was a party to individual complaint mechanisms under the Optional Protocol to the International Covenant on Civil and Political Rights and under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Individuals and groups were also able to file complaints with the Inter-American Commission on Human Rights, pursuant to the American Declaration of the Rights and Duties of Man. Those complaint mechanisms were well known in Canada and had been used by individuals and NGOs.

44. A question had been asked at the Committee's preceding meeting about section 33 of the Canadian Charter of Rights and Freedoms. Until 1982, when the Charter and other specific guarantees had been incorporated into the Constitution, final decision-making powers on fundamental human rights issues had resided with the Parliament; they had since been transferred to the judiciary in most circumstances. However, section 33 of the Charter retained a limited sovereignty in Parliament and the provincial legislatures over such matters.

45. Canadian domestic provisions did not necessarily have the same content as their counterparts in international law. Claimants in Canada had invoked the right to life, laid down in section 7 of the Canadian Charter, in an attempt to prevent the testing of cruise missiles, to prevent an abortion and to obtain funded drug therapy. Had the courts upheld those claims, it would not have been contrary to international law for the Government to invoke section 33 of the Charter. However, it was Canada's obligation to ensure that section 33 was never invoked in circumstances that were contrary to international law. That, in fact, had been Canada's position before the Human Rights Committee. The Supreme Court of Canada had itself stated that Canada's international human rights obligations should inform the interpretation of the content of the rights guaranteed by the Canadian Charter.

46. She referred in conclusion to the McIntyre-Ballantyne case. Several years earlier, the complainants had filed a communication with the Human Rights Committee complaining of a violation of their rights under the Covenant by Quebec Bill 178, which prohibited languages other than French on outside commercial signs. In 1993 the Human Rights Committee had concluded that the Bill was contrary to freedom of expression as guaranteed by the Covenant. Bill 178 had since been amended by Bill 86, and it was now possible for almost all outdoor commercial signs to be in another language plus French. She would transmit the Committee's questions concerning the Bill to the Quebec provincial government and would see to it that Canada's next report contained additional information. Due to time constraints her delegation had been unable to address all the questions raised by members of the Committee. It would undertake to have them addressed in Canada's next report.

47. Mr. HYNES (Canada), said that his delegation remained at the Committee's disposal to note any further questions members wished to ask.

48. Mr. WOLFRUM thanked the Canadian delegation for the very extensive oral information it had just provided to the Committee, but regretted that the information had not been included in the written report. The Committee should recommend that Canada's next report, like the oral report it had just presented, should contain more information on the implementation of the various programmes, legislation, etc., in short information on practice. The number of questions would decrease accordingly. He would like to ask a few more questions. First, the Canadian Constitution contained provisions for the distribution of powers between the federal Government and the various provincial governments. Under international law, however, the Committee's "partner" was the federal Government, which had ratified the Convention. If the federal Government had no way of compelling the provinces to implement the Convention in areas under their jurisdiction, as the Canadian delegation had remarked in passing, that meant it had concluded a treaty that it was not able to enforce, which represented a violation of international law. Secondly, he was not very happy with the term "visible minorities", which was too restrictive. The term "minority" did not even appear in the Convention itself, which was extremely broad in scope. Thirdly, the next report should state how many laws remained to be enacted in order to settle territorial claims. Fourthly, the Canadian authorities should have addressed their report on the events at Oka to the Committee rather than the Sub-Commission on Prevention of Discrimination and Protection of Minorities, although he acknowledged that there was some overlapping of competence. Fifthly, regarding employment, according to his figures the Employment Equity Act applied to only 10 per cent of Canada's total labour force, and, even allowing for such a restricted scope, limited progress had been achieved. Sixthly and lastly, he would like to know who was really responsible for immigration, the federal Government or the provincial governments? In that connection, Canada's next report should review the treatment of immigrants from Asia and Africa during the immigration procedure, and the treatment of African Canadians once they had been accepted, even though they represented a very small group.

49. Mr. RECHETOV thanked the Canadian delegation for the quality of its information, which had dispelled the Committee's doubts on many issues. Like Mr. Wolfrum, he regretted that this information had not been included in the written report. He commended the Canadian authorities for their behaviour during the conflict with the Mohawks: they had taken steps to resolve the conflict, but they had also kept the international community informed of what they were doing. That approach was fully in keeping with the "spirit of the times". In his view, the dialogue between the Committee and Canada was virtually a "model dialogue".

50. Mrs. SADIQ ALI fully endorsed Mr. Wolfrum's and Mr. Rechetov's statements on the oral information provided by the Canadian delegation. As to the distribution of jurisdiction between the provincial governments and the federal Government, she would like to know whether there were areas - such as employment and education - over which both levels of government had jurisdiction simultaneously. She hoped that Canada's next report would contain some information on that question.

51. Mr. YUTZIS thanked the Canadian delegation for its excellent report. He would, however, welcome clarification of an issue that had been discussed at length by the Committee and the Canadian delegation during the consideration of previous reports, namely, what conditions were required for the provisions of the Convention to be implemented in all provinces of the Canadian federal State. He would also like the Canadian delegation to define the expression "visible minority".

52. Mr. de GOUTTES said that the Canadian delegation had given a good example of the spirit of dialogue that it was possible to establish between the Committee and a State party. He acknowledged that it was difficult to reply to all questions in so short a period as that available to the Canadian delegation. Nevertheless, he hoped that Canada's next written report would contain more detailed information on the following subjects: judicial statistics, examples of convictions for acts of racism, results of community justice programmes for indigenous people and the Police-Minority Youth Summer Employment Project. He would also appreciate hearing the Canadian delegation state whether the Government planned to make the declaration provided for in article 14 of the Convention since, as he understood it, Canada had already accepted the principle of individual communications in the context of other human rights instruments.

53. Mr. van BOVEN thanked the Canadian delegation for its comprehensive replies to members' questions. Concerning article 14 of the Convention, referred to by Mr. de Gouttes, he welcomed Canada's recognition of the right of individual petition in the context of other international instruments dealing, in particular, with the question of racial discrimination. He hoped that Canada would continue to study the issue and would make the declaration provided for in the Convention.

54. The CHAIRMAN, speaking in a personal capacity, commended Canada for the quality of its report. He would like, however, to know the Canadian Government's position on the indigenous populations, specifically whether or not they were considered to be minority ethnic groups. He would also like clarification of the 1991 census table on page 4 of document CERD/C/240/Add.1, according to which the English, Irish, Scottish and Welsh had the same ethnic origin.

55. Mr. HYNES (Canada) took note of all the suggestions made by the members of the Committee and assured them that they would be taken into consideration when the next periodic report was prepared. There had been a very useful exchange of views between his delegation and the members of the Committee, which could not but improve the treatment of the question of racial discrimination in Canada in the future.

56. The CHAIRMAN said that the Committee had thus completed the first part of its consideration of the eleventh and twelfth periodic reports of Canada. He expressed appreciation for the constructive dialogue between the Canadian Government and the Committee.

57. The Canadian delegation withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

58. Mr. DIACONU, referring to the question of the dates of the Committee's future sessions, asked whether those dates could be changed. He had had difficulty in obtaining an airline ticket to Geneva.

59. After a brief exchange of views between Mr. DIACONU, Mr. RECHETOV and Mr. FERRERO COSTA, Mrs. KLEIN (Special Representative of the Secretary-General) drew members' attention to the fact that the calendar of conferences for 1994/95 had already been adopted and that, in view of the increasing number of meetings being held at the Palais des Nations, it was very difficult to change their dates. On the question of airline tickets, she said that the United Nations administrative and financial services were prepared to lend their assistance in the issuing of tickets, but they must be informed promptly of any changes in members' addresses.

The meeting rose at 6 p.m.